

August 13, 2010

The Honorable Ron Kirk
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Kirk:

I write to follow up on our discussions about the Anti Counterfeit Trade Agreement (ACTA). I believe that the ACTA negotiations that are to occur in Washington, DC next week presents the Obama Administration with a unique opportunity to demonstrate how it will establish transparency as a central pillar of the administration's approach to international trade.

As you know, I have long held concerns about the process used to negotiate ACTA, and the substance of the talks. An international norm-setting effort on intellectual property protection in the digital environment should not be taken lightly, nor is it an exercise that should allow the narrow interests of the well-connected outweigh the broad interests of the American public. I thank you for the meaningful steps that you and your staff have taken to improve transparency and encourage you to take even more. Your decision to allow the ACTA negotiating text to be made public earlier this year was a meaningful step forward, demonstrating the need to trust and empower the American public to understand and shape the U.S. position on international trade. I am disappointed that the U.S. objected to making public the ACTA negotiating text that followed the discussions in Lucerne, Switzerland because there were positive developments that resulted from the round and because difficult and controversial decisions remain. The fact that this draft text is available on the Internet because it was leaked by your European counterparts speaks volumes about how important the medium is to democratizing valuable information, and how the attempt to keep it secret was short-sighted.

Although I am pleased that the current ACTA text takes steps toward making clear that poor countries will retain their appropriate ability to obtain generic pharmaceutical drugs, I and others still have serious concerns about the current text with respect to patents and copyrights. Unless these concerns are resolved, there will be significant opposition from America's technology industry and from many of us in the Congress. The office of the U.S. Trade Representative must work to ensure that the ACTA does not export the strong penalties found in U.S. copyright law that discourage infringement without exporting the protection and limitations that accompany them, like "fair use" and section 230 of the Communications Decency Act for instance. At a time when opening foreign markets is vital to economic growth, ACTA would be unacceptable if it helps make foreign markets more legally hazardous for U.S. technology and Internet firms.

In terms of the next round of ACTA negotiations, I request that you:

- Establish a means by which interested stakeholders can obtain an understanding about rationale of the U.S. positions that are evident in the leaked copy of the ACTA
- Establish a process by which interested stakeholders can be consulted during the next and all subsequent rounds of ACTA negotiations
- Establish a process by which the draft ACTA negotiating texts are made public once they are distributed to the countries participating in the negotiations
- Seek to address the substantial concerns that the technology sector and public interest representatives have with ACTA
- Not sign any final agreement until the text of it has been made public and the Congress has sufficient opportunity to review the agreement and learn the public's views on it

The lessons we can learn from the ACTA negotiations can guide our approach to trade negotiations more broadly. As a U.S. Senator, I may obtain the negotiating text of a potential trade agreement, but I am prohibited from consulting with stakeholders that are not pre-cleared by the administration to have knowledge of the agreement. The public ACTA text and the leaked copies on the Internet improved my ability to obtain feedback from a wider group of stakeholders than I would otherwise have access to and, as a result, my own views about ACTA are better informed. I would like to work with you to think through the way that bilateral and regional trade agreements are negotiated to determine whether there are ways to bring more transparency to the discussions in order to achieve agreements that are as well constructed as possible.

As always, I appreciate your consideration of my views and suggestions and look forward to our continued work together.

Sincerely,



Ron Wyden
United States Senator